Stamp Act of 1891, even though only one party has signed it. The provisions of section 21 of the Stamp Ordinance are identical with those of section 59 of the Stamp Act 1891 and therefore it follows that this document, being an agreement or memorandum, containing all the terms of the sale is within section 21 and therefore liable to *ad valorem* duty.

For these reasons, in my opinion, the learned Judge was right in holding that this document was chargeable with *ad valorem* duty and this appeal should be dismissed with costs.

Taylor J. :—This is an appeal from a judgment of the High Court dismissing an appeal by way of case stated from a decision of the Commissioner of Stamps. The proceeding was entitled a District Court Appeal but that is merely a matter of listing; the case was never before the District Court.

The facts are simple. [The learned Judge stated the facts as reproduced in the headnote above and continued]. The fundamental principle is this. The Stamp Act taxes instrument, not transactions. If there are two ways of carrying out a transaction and the parties are content with the simpler, they are entitled to carry it out in that way. Whatever instrument they in fact use must be stamped as what it actually is, on a true construction of the document alone but extraneous evidence may be adduced to show, for instance, whether an assignment, was made in pursuance of a sale or of a partition.

I entirely agree with the learned President of the Court that this transaction was, in substance, a sale.

As to the instrument itself, it is clear that a simple receipt was insufficient to effect the purpose and intention of the parties. Without the second paragraph it would not have appeared clearly in writing that Siow had retired. Suppose that he died ten months later and the firm had had a good year. His executors might have said—"True, he had drawn his share up to that date but he was still a partner and we want accounts". The continuing partners needed, and took, the confirmation clause as a safeguard against possible further claims.

If one of two brothers wrote to his father's administratrix:—"Dear Mother, John has paid me the £2,000. From now on, my share belongs to him"—that would be an equitable assignment of his share. This instrument is similar in meaning and effect. I am clearly of opinion that it is an equitable assignment of his share in the firm which, being made on a sale, is stampable *ad valorem*.

This instrument differs in several respects from the one in *Fleetwood-Hesketh's*[2] case which contained the words "purchase price, agreed" and was, therefore, on its face suggestive of an agreement, on or for, sale. Quite possibly an instrument not unlike the one set out above might be held to be a memorandum of agreement but I prefer not to express any opinion as to whether the instrument here in question could be so construed.

I would emphasise that though the instrument is in my view an equitable assignment, I do not imply that the Registrar of Trade Marks was bound to act on it. He is not a trustee. The document, by itself or with other evidence, may or may not have been sufficient for the purpose for which it was adduced. That aspect is not here considered.

I agree that this appeal should be dismissed with costs.

Tan Ah Tah J. :—I have had the advantage of reading the judgment of the learned Chief Justice. I agree with it and do not wish to add anything.

Appeal dismissed.

Solicitors: *Drew & Napier.*

LOUGHRAN v. ARMSTRONG (m.w.)

[C. A. (Whyatt C.J., Taylor and Tan Ah Tah JJ.) January 20, 1956]

[Singapore—Civil Appeal No. 27 of 1955]

Damages—Personal injuries arising from professional negligence—Injuries of a transient character—Pain and suffering and temporary loss of amenity—Compensation.

In this case the appellant performed an operation on the respondent's foot, but instead of improving the foot the operation made it worse. She found that after the operation any side or upward movement of the foot caused her intense pain, there was loss of sensation in one part of her foot whilst other parts were very tender, her ankle used to swell and she limped and was unable to walk properly. After enduring this condition for four months she consulted another doctor and was advised by him to submit to another operation. This was performed and when the foot was opened up, it was discovered that the sural nerve had been severed at the first operation and used for some form of fixation of the ankle. The damaged nerve was joined and a tendon transplantation carried out **ad modum Watson-Jones**. The second operation was successful and in the opinion of the doctor who performed it the respondent should not then suffer any permanent disability as a result of the first operation. In the Court below she was awarded damages of $8,481.50, being $981.50 as special damages and $7,500 as general damages. The appellant admitted liability and the only issue appealed against was the award of $7,500 for general damages.

Held: (1) in this case the compensation to be awarded to the respondent should be limited to pain and suffering and to some temporary loss of amenity following upon the first operation; (2) it is essential that some reasonable relationship should be maintained between damages awarded for grave injuries of a permanent kind and relatively slight injuries of a transient character

such as sustained by the respondent in this case; (3) in the circumstances the sum of $7,500 awarded for general damages in this case should be reduced to $4,000.

Cases referred to:—

(1) *Low Ah Tow v. Yusof bin Kayab* (1954) M.L.J. 112.

(2) *Manley v. Rugby* Kemp & Kemp on Damages 333, 337.

(3) *Nance v. British Columbia Electric Rly. Co. Ltd.* (1951) A.C. 601.

(4) *Rushton v. National Coal Board* (1953) 1 Q.B. 495.

COURT OF APPEAL, Appeal against the judgment of Whitton J.

F. R. N. H. Massey for the appellant.

L. Rayner for the respondent.

Cur. Adv. Vult.

Whyatt C.J. : — This is an appeal by the defendant against a judgment of Mr. Justice Whitton by which the learned Judge awarded to the plaintiff the sum of $8,481.50 damages for personal injuries caused by the defendant's negligence, of which $981.50 represents special damages and $7,500 represents general damages. Liability was admitted by the defendant and the amount of the special damages was not contested on appeal. Consequently the only issue with which the Court is concerned is whether the award of $7,500 general damages is too high and should be reduced by this court.

The details of the injury to the plaintiff can be shortly stated. In April 1954 the plaintiff who is a young woman twisted her foot coming down some steps and as a result had to undergo an operation on her foot for the purpose of stabilising her ankle. The defendant performed the operation on the 3rd May 1954 but instead of improving the foot the operation made it worse. The plaintiff found that after the operation any side or upward movement of the foot caused her intense pain, there was loss of sensation in one part of her foot whilst other parts were very tender, her ankle used to swell and she limped and was unable to walk properly. After enduring this condition for four months she consulted another doctor and was advised by him to submit to another operation. This was performed on 12th October 1954 and when the foot was opened up, it was discovered that the sural nerve had been severed at the first operation and used for some form of fixation of the ankle. The damaged nerve was joined and a tendon transplantation carried out *ad modum Watson-Jones*. The second operation was successful and in the opinion of the doctor who performed it the plaintiff should not now suffer any permanent disability as a result of the first operation. There was a suggestion by one medical witness that a small anaesthesia patch on the foot might not completely recover, though it would certainly get less, but in my view it would not be a matter of great moment if it failed completely to disappear.

It is clear, therefore, that this is not one of those cases where the Court has, so to speak, to look into the future and compensate the plaintiff for a physical injury which will continue for the rest of the plaintiff's life. The problem of assessing damages in the present case falls within narrow limits and in substance, relates only to compensation for pain and suffering and for inconvenience, (or loss of amenity as it is usually called) caused by the defendant's negligence. It should perhaps be mentioned that the Court is in no way concerned with the degree of blame attaching to the defendant but solely with what is fair and just compensation for the injury which the plaintiff has suffered.

The learned Judge in assessing damages split them up under two heads, specifying $5,000 for pain and suffering and $2,500 for inconvenience resulting from the injury, making a total of $7,500. In allocating damages under separate heads, the learned Judge was following the procedure adopted in *Low Ah Tow v. Yusof bin Kayab*[1], and no doubt this procedure, as a matter of law, is unexceptionable but it is, nevertheless, in practice unusual. In *Manley v. Rugby Portland Cement Co., Ltd.*[2] (see *Kemp & Kemp* on The Quantum of Damages in Personal Injury Claims page 333, 337), Birkett L.J. observed :—

> The learned Judge did not specify so much in respect of pain and suffering, so much for this and so much for the other, ... you cannot expect the learned Judge to do that. It would be most unreasonable to expect it. There may be special cases where it is desirable to do it, but in the ordinary run of cases the learned Judge does not. He says: 'I have considered everything relevant. I have listened to the speeches of counsel and here is my award.'

In my opinion this *dictum* of Birkett L.J. states correctly the normal procedure in this class of cases and therefore, in considering the award in this particular case, I think it would be more in accordance with established practice to have regard to the global figure (as it is sometimes called) of $7,500 rather than to the separate heads specified by the learned Judge in his judgment.

The principles upon which an appellate court will interfere with an estimate of damages by a learned Judge have been frequently stated and are concisely summarised in a passage of Viscount Simon's speech in *Nance v. British Columbia Electric Railway Company Limited*[3], at page 613 :—

> . . . . . before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law

(as by taking into account some irrelevant factor or leaving out of account some relevant one); or, short of this, that the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.

In the present case it was argued on behalf of the defendant that the learned Judge had misapprehended some of the facts in that he had found that some measure of disadvantage was likely to continue for some years, if not permanently, whereas, apart from the small anaesthesia patch to which I have referred, there was no evidence to support this view; it was also contended that the learned Judge was mistaken in thinking that the degree of pain suffered by the plaintiff was in any way comparable with that suffered by the plaintiff in *Low Ah Tow's*[1] case; in addition, it was submitted that on any view of the matter, the damages were inordinately high and should be reduced.

In the application of principles of compensation to the imponderable items of pain and suffering and loss of amenity, the Courts seek, as far as possible, to achieve some measure of uniformity and the only way of doing this, as Romer L.J. observed in *Rushton v. National Coal Board*[4], is to consider cases which have come before the Courts in the past and see what amounts have been awarded in circumstances comparable with those in the case before the Court. It is, of course, important, as was stated, or at least implied, in *Low Ah Tow v. Yusof bin Kayab*[1], that the cases to which reference is made should be fully reported so that the facts may be properly appreciated; but provided this condition is fulfilled I am of the opinion that it is of great assistance in aiming at uniformity to examine cases where circumstances are comparable. Counsel for the defendant referred us to a number of such cases. It is true, as was pointed out by counsel for the plaintiff, that most of them were decisions given in the United Kingdom where economic conditions are different but since, in the present case, nothing has to be included for damages for prospective loss of earnings, differences of this kind are not very material.

I consider, therefore, that the cases referred to by counsel for the defendant provide valuable guidance in the present case and if they had been brought to the attention of the learned Judge he might well have reached a different conclusion. The salient fact to be borne in mind in this case is that, with the possible exception of the small patch of anaesthesia, the plaintiff is to be regarded as a person who will make a complete recovery from the injury attributable to the defendant's negligence; consequently, compensation should be limited to pain and suffering and to some temporary loss of amenity following upon the first operation. The plaintiff's injury was undoubtedly painful but, in comparison with some of the grave injuries which come before the Courts from time to time, it was a slight injury; and it is essential that some reasonable relationship should be maintained between damages awarded for grave injuries of a permanent kind and relatively slight injuries of a transient character such as the plaintiff sustained in this case. Bearing these considerations in mind, I am of the opinion that the sum of $7,500 is out of line with the amounts awarded in cases of a comparable character and, if we are to keep within the trend of the earlier decisions, the award for general damages should be very substantially reduced. I consider that, taking all relevant factors into consideration, a reasonable sum to award in this case is $4,000 which, with the addition of the special damages, makes a total of $4,981.50. I would order that the learned Judge's assessment be varied accordingly.

Taylor and **Tan Ah Tah JJ.** concurred.

Appeal allowed; No order varying order regarding costs of trial.

Solicitors: *Allen & Gledhill; L. Rayner.*

GOH AH TOO v. REG.

[C. C. A. (Whyatt C.J., Taylor and Tan Ah Tah JJ.) March 8, 1956]

[Singapore — Criminal Appeal No. 27 of 1955]

Criminal law and Procedure — Appeal to Court of Criminal Appeal — Grounds of appeal — Verdict "against the weight of evidence" — Inaccurate phrase — Strict compliance with statutory language essential — That "verdict is unreasonable or cannot be supported having regard to the evidence" — Court of Criminal Appeal Ordinance, s. 6(1).

Evidence — "Irrelevant, inadmissible and highly prejudicial" — References made to "secret society or gang" — Deposition of prosecution witness before Coroner — Admissibility — Direction to the jury.

In this case one of the grounds of appeal was stated to be that the "verdict of the jury was against the weight of the admissible evidence." The Court drew counsel's attention to the provisions of section 6(1) of the Court of Criminal Appeal Ordinance and to the decision of the Privy Council in **Aladesuru** v. R.[1] where it was laid down that in order to succeed an appellant must show, in the words of the statute, that the verdict "is unreasonable or cannot be supported having regard to the evidence." The Privy Council there was of the opinion that it was not a sufficient ground of appeal to allege that the "verdict is against the weight of evidence;" and that the phrase was inaccurate and could not properly be substituted for the words of the statute. Counsel then applied for leave to amend the grounds of appeal so as to conform with the words of the Ordinance and this application was granted. The Court granting the application said: *"We would like it be known, however, that in future any ground of appeal which is worded similarly to the one originally filed in this case will be struck out."*